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304. Report of Local Exchange Companies of Cost Accounting Studies. OMB suggested that the description and justification for this requirement be clarified.⁹⁵⁹ The rules require incumbent LECs to offer individual central office coin transmission services to PSPs under a nondiscriminatory, public tariffed offering if the LECs provide those services for their own operations. Because the incumbent LECs may have an incentive to charge their competitors unreasonably high prices for these services, we require them to submit cost support for their central office coin services, on a one-time basis. This will ensure that the services are reasonably priced and do not include subsidies.

305. Report of Bell Operating Companies of Initial Comparably Efficient Interconnection Plans. OMB requested that we provide revised cost and burden hour estimates.⁹⁶⁰ The cost and burden hour estimates have not changed.

306. Annual Filing of Nondiscrimination Reports by Bell Operating Companies. OMB requested that we provide revised cost and burden hour estimates.⁹⁶¹ The cost and burden hour estimates have not changed.

307. Quarterly Report of IntraLATA Carriers Listing Payphone Automatic Number Identification (ANIs). OMB suggested that we allow interLATA carriers to use innovative approaches to provide ANIs, such as posting the information on the Internet or distributing the information via electronic mail.⁹⁶² We have not specified the manner in which interLATA carriers must supply carrier-payors with the list of payphone ANIs. InterLATA carriers are free to use any technologies at their disposal to distribute the necessary information.

308. Public Disclosure of Network Information by Bell Operating Companies. OMB suggested that we weigh the reporting and notification burden of this requirement, as well as consider shortening the period of public disclosure from a minimum of six months, so as not to unfairly burden BOCs by delaying technical modifications to their systems.⁹⁶³ We agree with OMB that we should choose the least burdensome method to accomplish our goal of prohibiting the BOCs from discriminating in the provision of payphone service. We believe, however, that a minimum six-month period of public disclosure prior to the introduction of a new service is vital to ensure that BOCs do not design new network services or change network technical specifications to the advantage of their own payphones.

⁹⁵⁹ Notice of Office of Management and Budget Action, (OMB No. 3060-0721) (Released September 8, 1996).

⁹⁶⁰ Notice of Office of Management and Budget Action, (OMB No. 3060-0722) (Released August 26, 1996).

⁹⁶¹ Notice of Office of Management and Budget Action, (OMB No. 3060-0725) (Released August 26, 1996).

⁹⁶² Notice of Office of Management and Budget Action, (OMB No. 3060-0719) (Released August 26, 1996).

⁹⁶³ Notice of Office of Management and Budget Action, at 2 (OMB No. 3060-0723) (Released August 29, 1996).

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309. Annual Report of Interexchange Carriers Listing the Compensation Amount Paid to Payphone Providers and the Number of Payees. OMB suggested that we weigh the burden imposed by the payment and information mechanism contained in this requirement.⁹⁶⁴ We agree with OMB that we should choose the least burdensome method to accomplish our goal of ensuring that all IXC's are paying their respective compensation obligations. Therefore we conclude that this reporting requirement will be terminated after the carriers have filed their reports for the 1999 calendar year. In addition, for further flexibility, we delegate to the Chief, Common Carrier Bureau, the authority to establish the details, as necessary, of this annual report, including the authority to extend or limit the scope of this report.

310. Quarterly Report of Interexchange Carriers Listing the Number of Dial Around Calls for Which Compensation is Being Paid to Payphone Owners. OMB suggested that we weigh the burden imposed by the payment verification mechanism contained in this requirement.⁹⁶⁵ We agree with OMB that we should choose the least burdensome method to accomplish our goal of ensuring that billing and collection are as efficient as possible. In fact, we weighed several alternatives to achieve optimum efficiency and the least burdensome approach, before imposing this requirement. This requirement is imposed on the IXC's because they have the greatest ability and incentive to establish the most efficient means of administering the payment of compensation.

3. Final Regulatory Flexibility Act Analysis

311. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA.⁹⁶⁶ The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).⁹⁶⁷

A. Need for and Objectives of this Report and Order and the Rules Adopted Herein

312. The Commission, in compliance with Section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the 1996 Act), promulgates the rules in this Order to promptly implement Section 276 of the 1996 Act, which directs the Commission, among other things, to adopt rules that: (1) establish a plan to ensure fair

⁹⁶⁴ Notice of Office of Management and Budget Action, at 2 (OMB No. 3060-0724) (Released August 29, 1996).

⁹⁶⁵ Notice of Office of Management and Budget Action, at 2 (OMB No. 3060-0726) (Released August 29, 1996).

⁹⁶⁶ Notice at paras. 95-102.

⁹⁶⁷ Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" ("SBREFA"), codified at 5 U.S.C. § 601 et seq.

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compensation for "each and every completed intrastate and interstate call using [a] payphone[;]"⁹⁶⁸ (2) discontinue intrastate and interstate carrier access charge payphone service elements payments and intrastate and interstate payphone subsidies from basic exchange services;⁹⁶⁹ (3) prescribe nonstructural safeguards for Bell Operating Company (BOC) payphones;⁹⁷⁰ (4) permit the BOCs to negotiate with payphone location providers for the intraLATA carriers presubscribed to their payphones;⁹⁷¹ (5) permit all payphone providers to negotiate with the location provider for the intraLATA carriers presubscribed to their payphones;⁹⁷² and (6) adopt guidelines for use by the states in establishing public interest payphone programs.⁹⁷³

313. The objective of the rules adopted in this Order is "to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public."⁹⁷⁴ In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to consumers and its concern for the impact of the 1996 Act on small businesses.

B. Analysis of Significant Issues Raised in Response to the IRFA

314. Summary of the Initial Regulatory Flexibility Analysis (IRFA). In the IRFA, the Commission found that the rules we proposed to adopt in this proceeding may have a significant impact on a substantial number of small business as defined by section 601(3) of the RFA. The IRFA solicited comment on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. The Commission received one comment on the potential impact on small business entities, which the Commission considered in promulgating the rules in this Order. Frontier commented generally that the compensation scheme advanced in the NPRM was "unnecessarily onerous and inefficient" and "in conflict with the goals of the Regulatory Flexibility Act."⁹⁷⁵ Frontier did not comment specifically on what aspect of the compensation scheme would have economic impact on small business entities. We disagree with Frontier's general assertion that the compensation scheme is in conflict with the Regulatory Flexibility Act. Our rules are designed to facilitate the development of competition, which benefits many small business entities. The rules will ensure that payphone services providers, many of whom may be small business entities, receive fair

⁹⁶⁸ 47 U.S.C. § 276(b)(1)(A).

⁹⁶⁹ 47 U.S.C. § 276(b)(1)(B).

⁹⁷⁰ 47 U.S.C. § 276(b)(1)(C).

⁹⁷¹ 47 U.S.C. § 276(b)(1)(D).

⁹⁷² 47 U.S.C. § 276(b)(1)(E).

⁹⁷³ 47 U.S.C. § 276(b)(2).

⁹⁷⁴ 47 U.S.C. § 276(b)(1).

⁹⁷⁵ Frontier Comments at 2.

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compensation. Our rules provide significant flexibility to permit the affected parties, including small business entities, to structure procedures that would minimize their burdens. For example, the rules require IXCs and intraLATA carriers, as primary economic beneficiary of payphone calls, to track the calls they receive from payphones. The carrier has the option of performing the function itself or contracting out these functions to another party, such a LEC or clearinghouse. We also provide a transition period. We believe that our rules are designed to effectively optimize the efficiency and minimize the burdens of the compensation scheme on all parties, including small entities.

C. Description and Estimates of the Number of Small Entities Affected by this Report and Order

315. For the purposes of this Order, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.⁹⁷⁶ Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).⁹⁷⁷ SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity when it has fewer than 1,500 employees.⁹⁷⁸

316. We have found incumbent LECs to be "dominant in their field of operation" since the early 1980s, and we consistently have certified under the RFA⁹⁷⁹ that incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses.⁹⁸⁰ We have made similar determinations in other areas.⁹⁸¹ However, in the Local Competition proceeding, several parties, including the SBA, commented that we should have

⁹⁷⁶ See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

⁹⁷⁷ 15 U.S.C. § 632. See, e.g., Brown Transport Truckload, Inc. v. Southern Wipers, Inc., 176 B.R. 82 (N.D. Ga. 1994).

⁹⁷⁸ 13 C.F.R. § 121.201.

⁹⁷⁹ See 5 U.S.C. § 605(b).

⁹⁸⁰ See, e.g., Expanded Interconnection with Local Telephone Company Facilities, Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 5809 (1991); MTS and WATS Market Structure, Report and Order, 2 FCC Rcd 2953, 2959 (1987) (citing MTS and WATS Market Structure, Third Report and Order, 93 F.C.C.2d 241, 338-39 (1983)).

⁹⁸¹ See, e.g., Implementation of Sections of the Cable Television Consumer Protection Act of 1992: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7418 (1995).

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included small incumbent LECs in the IRFA pertaining to that order.⁹⁸² We recognize SBA's special role and expertise with regard to the RFA, and intend to continue to consult with SBA outside the context of this proceeding to ensure that the Commission is fully implementing the RFA. Although we are not fully persuaded that our prior practice has been incorrect, we will, nevertheless, include small incumbent LECs in this FRFA to remove any possible issue of RFA compliance. Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this FRFA. Nevertheless, as mentioned above, we include small incumbent LECs in our FRFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."⁹⁸³

Telephone Companies (SIC 4813)

317. Total Number of Telephone Companies Affected. Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by the SBA. The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.⁹⁸⁴ This number encompasses a broad category which contains a variety of different subsets of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."⁹⁸⁵ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Order. We estimate below the potential small entity telephone service firms or small incumbent LECs that may be affected by this Order by service category.

318. Wireline Carriers and Service Providers. The SBA's definition of small entities for telephone communications companies, other than radiotelephone (wireless) companies,

⁹⁸² The Small Business Administration (SBA), the Rural Telephone Coalition (Rural Tel. Coalition), and CompTel maintain that the Commission violated the RFA when it failed to include small incumbent LECs in its IRFA without first consulting SBA to establish a definition of "small business." See Local Competition Order at paras. 1328-1330.

⁹⁸³ See 13 C.F.R. § 121.210 (SIC 4813).

⁹⁸⁴ United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

⁹⁸⁵ 15 U.S.C. § 632(a)(1).

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is one employing fewer than 1,500 persons.⁹⁸⁶ The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.⁹⁸⁷ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

319. Local Exchange Carriers. Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS).⁹⁸⁸ According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.⁹⁸⁹ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules adopted in this Order.

320. Interexchange Carriers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 97 companies reported that they were engaged in the provision of interexchange services.⁹⁹⁰ Although it seems certain that some of these carriers are not independently owned and operated,

⁹⁸⁶ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

⁹⁸⁷ 1992 Census, *supra*, at Firm Size 1-123.

⁹⁸⁸ All carriers that provide interstate service are required to pay into the TRS Fund, which provides access to Telecommunications Device for the Deaf (TDD). *See generally*, 47 C.F.R. §§ 64.601 *et seq.*

⁹⁸⁹ Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 21 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Feb. 1996) (TRS Worksheet).

⁹⁹⁰ *Id.*

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or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXC's that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 97 small entity IXC's that may be affected by the decisions and rules adopted in this Order.

321. Competitive Access Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 30 companies reported that they were engaged in the provision of competitive access services.⁹⁹¹ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 30 small entity CAPs that may be affected by the decisions and rules adopted in this Order.

322. Operator Service Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services (OSPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 29 companies reported that they were engaged in the provision of operator services.⁹⁹² Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 29 small entity operator service providers that may be affected by the decisions and rules adopted in this Order.

323. Pay Telephone Operators. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 197 companies reported that they were engaged in the provision of pay telephone services.⁹⁹³

⁹⁹¹ Id.

⁹⁹² Id.

⁹⁹³ Id.

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Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 197 small entity pay telephone operators that may be affected by the decisions and rules adopted in this Order.

324. Resellers (including debit card providers). Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies (SIC 4812 and 4813). The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 206 companies reported that they were engaged in the resale of telephone services.⁹⁹⁴ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 206 small entity resellers that may be affected by the decisions and rules adopted in this Order.

325. 800-Subscribers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to 800-subscribers. The most reliable source of information regarding the number of 800-subscribers of which we are aware appears to be the data we collect on the number of 800-numbers in use.⁹⁹⁵ According to our most recent data, at the end of 1995, the number of 800-numbers in use was 6,987,063. Although it seems certain that some of these subscribers are not independently owned and operated businesses, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of 800-subscribers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800-subscribers that may be affected by the decisions and rules adopted in this Order.

326. Location Providers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to location providers. A location provider is the entity that is responsible for maintaining the premises upon which the payphone is physically located. Due to the fact that location providers do not fall into any specific category of business entity, it is impossible to estimate with any accuracy the number of location providers. Using several sources, however, we have derived a figure of 1,850,000 payphones in existence.⁹⁹⁶

⁹⁹⁴ Id.

⁹⁹⁵ Federal Communications Commission, CCB, Industry Analysis Division, FCC Releases, Study on Telephone Trends, Tbl. 20 (May 16, 1996).

⁹⁹⁶ There are approximately 1.5 million LEC payphones. Statistics of Communications Common Carriers, 1994/1995 edition, Common Carrier Bureau, FCC at 159, Table 2.10 (1995). There are approximately 50,000 competitively provided payphones. See Ex Parte Letter of Michael Benson, Senior Product Manager, PPO Compensation Clearinghouse, Cincinnati Bell to Michael Carowitz, Attorney, Common Carrier Bureau, FCC (April

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Although it seems certain that some of these payphones are not located on property owned by location providers that are small business entities, nor does the figure take into account the possibility of multiple payphones at a single location, we are unable at this time to estimate with greater precision the number of location providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,850,000 small entity location providers that may be affected by the decisions and rules adopted in this Order.

327. Wireless (Radiotelephone) Carriers (including paging services). The SBA's definition of a small business radiotelephone company is one employing fewer than 1,500 persons.⁹⁹⁷ The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.⁹⁹⁸ The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in this Order.

328. Cellular Service Carriers (including paging services). Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 789 companies reported that they were engaged in the provision of cellular services.⁹⁹⁹ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 789 small entity cellular service carriers that may be affected by the decisions and rules adopted in this Order.

24, 1996). Cincinnati Bell, as the payphone compensation paying agent for three interexchange carriers, states that it receives quarterly bills from PPOs for more than 350,000 competitively provided payphones. Id.

⁹⁹⁷ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

⁹⁹⁸ United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

⁹⁹⁹ Id.

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329. Mobile Service Carriers (including paging services). Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 117 companies reported that they were engaged in the provision of mobile services.¹⁰⁰⁰ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 117 small entity mobile service carriers that may be affected by the decisions and rules adopted in this Order.

330. Broadband PCS Licensees (including paging services). The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 C.F.R. § 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than \$40 million in the three previous calendar years. Our definition of a "small entity" in the context of broadband PCS auctions has been approved by SBA.¹⁰⁰¹ The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions.¹⁰⁰² Based on this information, we conclude that the number of broadband PCS licensees affected by the decisions in this Order includes, at a minimum, the 90 winning bidders that qualified as small entities in the Block C broadband PCS auction.

331. At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses will be awarded in the D, E, and F Block broadband PCS auctions, which are scheduled to begin on August 26, 1996. Of the 153 qualified bidders for the D, E, and F Block PCS auctions, 105 were small businesses.¹⁰⁰³ Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of less than \$125

¹⁰⁰⁰ Id.

¹⁰⁰¹ See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

¹⁰⁰² The FCC's Personal Communications Services (PCS) Entrepreneurs' Block (C Block) auction began on December 18, 1995 and closed on May 6, 1996. The reauction for 18 defaulted PCS C Block licenses commenced on July 3, 1996 and was completed on July 16, 1996.

¹⁰⁰³ See Auction of Broadband Personal Communications Service (D, E, and F Blocks), Public Notice, DA 96-1400 (rel. Aug. 20, 1996).

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million.¹⁰⁰⁴ There are 114 eligible bidders for the F Block.¹⁰⁰⁵ We cannot estimate, however, the number of these licenses that will be won by small entities under our definition, nor how many small entities will win D or E Block licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees¹⁰⁰⁶ and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, we assume for purposes of this FRFA, that all of the licenses in the D, E, and F Block Broadband PCS auctions may be awarded to small entities under our rules, which may be affected by the decisions and rules adopted in this Order.

332. SMR Licensees (including paging services). Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.¹⁰⁰⁷ The rules adopted in this Order may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this Order.

333. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many

¹⁰⁰⁴ Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, Report and Order, GN Docket No. 90-314, 11 FCC Rcd 7874 (1996).

¹⁰⁰⁵ See Auction of Broadband Personal Communications Service (D, E, and F Blocks), Public Notice, DA 96-1400 (rel. Aug. 20, 1996).

¹⁰⁰⁶ 1992 Census, Table 5, Employment Size of Firms: 1992, SIC Code 4812.

¹⁰⁰⁷ See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995).

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Small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in this Order.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements, and Steps Taken by Agency to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, consistent with Stated Objectives

334. Structure of the Analysis. In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities and small incumbent LECs as a result of this Order.¹⁰⁰⁸ As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements. We also describe the steps taken to minimize the economic impact of our decisions on small entities and small incumbent LECs, including the significant alternatives considered and rejected.¹⁰⁰⁹

FAIR COMPENSATION FOR EACH AND EVERY COMPLETED INTRASTATE AND INTERSTATE CALL ORIGINATED BY PAYPHONES

335. Summary of Projected Reporting, Recordkeeping and other Compliance Requirements. Section 276(b)(1)(A) directs the Commission to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone...."¹⁰¹⁰ To implement Section 276(b)(1)(A), this Order requires: (1) that the market set the price for local coin calls originated by payphones; (2) the appropriate per-call compensation amount for the service provided by independent payphone providers (PSPs) when they originate an interstate call should be the same amount the particular payphone provider charges for a local coin call; (3) the adoption of the "carrier pays" compensation system, which essentially places the payment obligation of per-call compensation on the primary economic beneficiary of payphone calls; (4) that the carrier, as the primary economic beneficiary of payphone calls, perform the tracking of calls it receives from payphones; (5) that carriers initiate an annual independent verification of their per-call tracking functions for a period of two years, to ensure that they are tracking all of the calls for which they are obligated to pay compensation, (6) a direct billing arrangement between IXC's and intraLATA carriers and PSPs; (7) that LECs, who maintain the list of ANIs, have the burden of resolving disputed ANIs; and (8) that an interim compensation mechanism be set up under which PSPs are paid compensation at a flat monthly rate. Compliance with these requirements may require the use of engineering, technical, operational, accounting, billing, and legal skills.

¹⁰⁰⁸ See 5 U.S.C. § 604(a)(4).

¹⁰⁰⁹ See 5 U.S.C. § 604(a)(5).

¹⁰¹⁰ 47 U.S.C. § 276(b)(1)(A).

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336. The payphone industry appears to have the potential of being a very competitive industry once the significant subsidies and entry/exit restrictions which are presently distorting the competition are removed.¹⁰¹¹ However, we perceive five potential areas that could have significant economic impact on small businesses and small incumbent LECs: (1) the amount of compensation paid to PSPs; (2) the "carrier pays" compensation system; (3) the administration of per-call compensation; (4) the direct billing arrangement between carriers and PSPs; and (5) the interim compensation mechanism.

337. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered: Amount of compensation: By requiring that the market set the price for individual coin calls originated by payphones we ensure that PSPs, many of whom may be small business entities, receive fair compensation. We considered different options in deciding upon this alternative. We reject proposals for adopting a national uniform rate of compensation for all calls using a payphone because a single, nationwide rate could jeopardize the financial viability of a majority of payphones. Rejection of this option allows for accounting for the significant variation in payphones in order to ensure the incentives to place and maintain phones in a variety of geographic areas.¹⁰¹² We also reject proposals that certain types of calls should receive a different per-call compensation amount than others. We decline to interfere in marketplace transactions by providing for different compensation amounts for different types of calls, in instances where marketplace failures are limited or would have minimal impact on consumer welfare.¹⁰¹³ We do not perceive the need to intervene in an apparently structurally competitive industry.

338. Many commentators, notably the IXC's, contend that marginal cost of originating a payphone call should be used as the basis for compensating PSPs. We conclude that use of a marginal cost standard or any closely related TSLRIC standard would leave PSPs under compensated, because such cost standards do not permit the recovery of any of a PSP's fixed costs, which make up the bulk of a PSP's costs. We also reject, for similar reasons, suggestions that current local coin rates be used as a surrogate for per-call compensation. Local coin rates are not necessarily fairly compensatory. Local coin rates in some jurisdictions may not cover the marginal cost of service and therefore, would not fairly compensate the PSPs.

339. This "market sets the price" approach provides flexibility. Some PSPs may find it advantageous to set coin rates as low as \$.10 per call in select locations, perhaps as promotions to enhance their brand names. PSPs in other locations may choose to set the coin rate higher, e.g. \$.35 or \$.40 per call.¹⁰¹⁴ We expect our action to minimize regulatory burdens,

¹⁰¹¹ See paras. 11-19, above.

¹⁰¹² See paras. 49-51, 55-61, above.

¹⁰¹³ See para. 49, above.

¹⁰¹⁴ See para. 51, above.

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expedite and simplify negotiations, and minimize economic impacts through lower transaction costs.

340. We reject the proposal of the BOCs and some independent payphone providers to use AT&T O+ commissions as a measure of fair value of the service provided by independent payphone providers when they originate an interstate call. These commissions may include compensation for factors other than the use of the payphone, such as a PSP's promotion of the OSP through placards on the payphone. In the absence of reliable data, the appropriate per-call compensation amount is whatever amount the particular payphone charges for a local coin call. PSPs, IXC, subscriber 800 carriers, and intraLATA carriers, many of whom may be small business entities, may find it advantageous to agree on an amount for some or all compensable calls that is either higher or lower than the local coin rate at a given payphone because it will grant parties in the payphone industry some flexibility and allow them to take advantage of technological advances.

341. Payment of compensation: Various commenters, including small IXCs and paging services, proposed that the Commission should adopt the "carrier-pays" system.¹⁰¹⁵ We reject proposals to adopt "caller-pays" and "set use fee" systems, because we believe that they would involve greater transaction costs which can pose particular burdens for small businesses. We considered various alternatives to adopt the "carrier pays" system for per-call compensation because it places the payment obligation on the primary economic beneficiary in the least burdensome, most cost-effective manner. All carriers that receive calls from payphones are required to pay per-call compensation, whether they are IXCs or intraLATA carriers.¹⁰¹⁶ The "carrier pays" system gives the carriers the broadest latitude on how to recover the costs of payphone compensation, whether through increased rates to all or particular customers, through direct charges to access code call or subscriber 800 customers, or through contractual agreements with individual customers, thereby involving fewer transaction costs. In addition, under the carrier pays system, individual carriers have the option of recovering either a different amount from their customers or no amount at all.

342. However, in the interests of administrative efficiency and lower costs, we require that facilities based carriers should pay the per-call compensation for calls received by their reseller customers. This would permit competitive facilities based carriers to negotiate contract provisions that would require the reseller to reimburse the carrier. We believe our actions will expedite and simplify negotiations, minimize regulatory burdens and the impact of our decisions for all parties, including small entities.

343. Administration of per-call compensation: We considered various proposals to determine who should provide call tracking. This Order requires IXCs and intraLATA carriers, as primary economic beneficiary of payphone calls, to track the calls they receive from

¹⁰¹⁵ See paras. 78,83, above.

¹⁰¹⁶ See para. 83, above.

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payphones. The carrier has the option of performing the function itself or contracting out these functions to another party, such as a LEC or clearinghouse. We recognize that tracking capabilities vary from carrier to carrier and it may be appropriate for some carriers to pay compensation at a flat rate basis until per-call tracking capabilities are put into place. Neither LECs nor PSPs are primary economic beneficiaries of payphone calls and PSPs do not universally have call-tracking capabilities. However, LECs, PSPs, and carriers receiving payphone calls should be able to take advantage of each others' technological capabilities through the contracting process.¹⁰¹⁷

344. In view of current difficulties in tracking such calls, we conclude that a transition period is warranted.¹⁰¹⁸ By permitting carriers to contract out their per-call tracking responsibility, and by allowing a transition period for tracking subscriber 800 calls, we have taken appropriate steps to minimize the per-call tracking burden on small carriers. In addition, to parallel the obligation to pay compensation, the underlying, facilities-based carrier has the burden of tracking calls to its reseller customers, and it may recover that cost from the reseller, if it chooses.¹⁰¹⁹

345. We conclude that carriers should be required to initiate an annual independent verification of their per-call tracking functions for a period of two years, to ensure that they are tracking all of the calls for which they are obligated to pay compensation. This would facilitate the prompt and accurate payment of all per-call compensation. We believe our actions will foster opportunities for small entities to gain access to such information without requiring investigation or discovery proceedings, and reduce delay and transaction costs.

346. To establish minimal regulatory guidelines for the payphone industry regarding resolution of disputed ANIs, we conclude that LECs who maintain the list of ANIs must work with both carrier-payors and PSPs to resolve disputes more efficiently and quickly for all parties concerned. This provides LECs with the incentive, which they do not currently have, to provide accurate and timely verification of ANIs for independently provided payphones. Additionally, no other party has the information more readily available.¹⁰²⁰ We expect this action to assist all parties, including small entities, expedite and simplify negotiations, and help equalize bargaining power.

347. Each time a caller dials a subscriber 800 number, the PSP will also levy a charge which may be paid directly by the IXC, but will eventually be passed through to the 800 subscriber, either on a per-call basis or in the form of higher per minute rates. Establishment of the requirement that PSPs inform these subscribers of the price of the call they are deciding to accept, provide subscribers with the opportunity to accept or decline to accept the call based on

¹⁰¹⁷ See para. 97, above.

¹⁰¹⁸ See para. 99, above.

¹⁰¹⁹ See para. 100, above.

¹⁰²⁰ See paras. 112-113, above.

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the cost. Without the requirement, the PSP would have the ability to charge a high amount in the face of the subscriber's lack of information. We expect our action to facilitate good faith negotiations, and minimize regulatory burdens and the impact of our decisions for all parties, including small entities.

348. While incumbent LECs in many jurisdictions currently do not charge payphone callers for "411" calls made from their own payphones, the LECs charge independent PSPs for directory assistance calls made from their phones. The PSPs are not always allowed by the state to pass those charges on to callers, which can pose particular burdens for them. In this Order we conclude that, to ensure fair compensation for "411" and other directory assistance calls from payphones, a PSP is permitted to charge a market-based rate for the service, although the PSP may decline to charge for this service if it chooses. In addition, we conclude that if the incumbent LEC imposes a fee on independent payphone providers for "411" calls, then the LEC must impute the same fee to its own payphones for this service.¹⁰²¹ We believe our action will facilitate the development of competition.

349. The direct billing arrangement between IXC's and intraLATA carriers and PSPs adopted in this Order places the burden of billing and collecting information on the parties who benefit the most from calls from payphones: carriers and PSPs. Carriers must send to each PSP a statement indicating the number of toll-free and access code calls received from that PSP's payphones. The carrier-payor has the option of using clearinghouses, similar to those that exist for access code call compensation, or to contract out the direct-billing arrangement associated with the payment of compensation.¹⁰²² We expect our action will foster opportunities for small entities to gain access to such information without requiring investigation or discovery proceedings.

350. Interim compensation mechanism: We considered various proposals regarding the feasibility of implementing an interim compensation mechanism before final rules go into effect. Because IXC's and intraLATA carriers are not required to track individual calls until October 1, 1997, we conclude that PSPs should be paid monthly compensation on a flat monthly rate. We expect that the flat rate obligation will be of administrative convenience for all parties involved, including small businesses.

RECLASSIFICATION OF LEC-OWNED PAYPHONES

351. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements. Section 276(b)(1)(B) directs the Commission to "discontinue the intrastate and interstate carrier access charge payphone service elements and payments ... and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a

¹⁰²¹ See para. 62, above.

¹⁰²² See para. 110, above.

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per-call] compensation plan."¹⁰²³ Currently, incumbent LEC payphones, classified as part of the network, recover their costs from Carrier Common Line (CCL) charges assessed on those carriers that connect with the incumbent LEC. This Order requires incumbent LECs to (1) classify their payphones as detariffed and deregulated CPE;¹⁰²⁴ (2) provide to PSPs nondiscriminatory access to unbundled central office coin transmission services and certain other services the LECs provide to their own payphones, and must file tariffs for central office coin services and those incumbent LECs that are not subject to price cap regulation must submit cost support for their central office coin service;¹⁰²⁵ (3) transfer their payphone assets to unregulated accounts or affiliates at the market value of the "payphone going concern," by April 15, 1997, and obtain independent appraisal of the fair market value to submit to the Common Carrier Bureau within 180 days of the effective date of this Order;¹⁰²⁶ and (4) reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges, and file revised CCL tariffs reflecting the changed rate structures.¹⁰²⁷ Compliance with these requirements may necessitate the use of engineering, technical, operational, accounting, billing, and legal skills.

352. Some of the smaller incumbent LECs may find difficult the administrative burdens of reclassifying payphones as CPE, transferring payphone assets to unregulated accounts, and filing new tariffs. Therefore, if a requesting carrier, which may be a small entity, seeks access to an incumbent LEC's unbundled elements, the requesting carrier is required to compensate the incumbent LEC for any costs incurred to provide such access.

353. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. The deregulation of LEC payphones is essential to promoting competition in the payphone industry. We reject several alternatives in making this determination, including proposals suggesting that the Commission (1) should allow smaller LECs to choose whether or not to deregulate their payphones;¹⁰²⁸ and (2) should impose a structural separation requirement for incumbent LEC payphones.¹⁰²⁹ The establishment of minimum national requirements for discontinuation of payphone subsidies from basic exchange and exchange access revenues should facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs. National

¹⁰²³ 47 U.S.C. § 276(b)(1)(B).

¹⁰²⁴ See para. 142, above.

¹⁰²⁵ See paras. 146-148, above.

¹⁰²⁶ See paras. 161-169, above.

¹⁰²⁷ See paras. 179-185, above.

¹⁰²⁸ See para. ___, above.

¹⁰²⁹ See para. 145, above.

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requirements may also allow new entrants, including small entities, to take advantage of economies of scale.

354. By requiring the incumbent LECs to offer individual central office coin transmission services to PSPs on a nondiscriminatory, public, tariffed offering, new entrants, which may include small entities, should have access to the same technologies and economies of scale and scope that are available to incumbent LECs. This will permit competitive payphone providers, some of whom are small business entities, to offer payphone services using either instrument implemented "smart payphones" or "dumb" payphones that utilize central office coin services. We reject the proposal suggesting that the Commission require incumbent LECs to provide on a nondiscriminatory basis all the services that they provide to their own payphone operations or require incumbent LECs to perform joint marketing of the payphone operations of other providers.¹⁰³⁰ Instead, we require only that the incumbent LEC offer the following services on a nondiscriminatory basis if it provides such services to its own payphone operations: fraud protection, special numbering assignments, and installation and maintenance of basic payphone services. Rejection of this alternative will allow small incumbent LECs to distinguish certain services from services offered by other payphone providers. Our actions in this area could decrease entry barriers for small business entities and provide reasonable opportunities for all payphone service providers to provide service.

ABILITY OF PAYPHONE SERVICE PROVIDERS TO NEGOTIATE WITH LOCATION PROVIDERS ON THE PRESUBSCRIBED INTRALATA CARRIER

355. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements. Section 276(b)(1)(E) directs the Commission to "provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones."¹⁰³¹ This Order grants to all payphone service providers, including incumbent LECs, the right to negotiate with location providers concerning the intraLATA carriers presubscribed to their payphones.¹⁰³² We also preempt any state regulations mandating the routing of intraLATA calls to the incumbent LEC.¹⁰³³ Compliance with these requirements should not necessitate the use of additional skills, since such skills are already used in negotiations concerning the interLATA carriers presubscribed to payphones.

356. Allowing all payphone service providers to negotiate with location providers concerning the intraLATA carriers presubscribed to their payphones could have a

¹⁰³⁰ See para. 148, above.

¹⁰³¹ 47 U.S.C. § 276(b)(1)(E).

¹⁰³² See para. 220 above.

¹⁰³³ See para. 222 above.

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positive economic impact on payphone providers who are small business entities by allowing them flexibility to create favorable contract terms. Small incumbent LECs may suffer some negative economic impact because intraLATA calls will no longer be routinely routed to them.

357. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. State regulations that require routing of intraLATA calls to the incumbent LEC are preempted by this Order, thereby creating a national rule allowing all payphone service providers to negotiate with location providers concerning the intraLATA carriers presubscribed to their payphones. A national rule should facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs. Our actions in granting to all payphone providers the same ability to negotiate with location providers on the selection of the intraLATA carrier presubscribed to the payphone will facilitate the development of competition.

REQUIRING LECS TO PROVIDE DIALING PARITY FOR PAYPHONES

358. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements. The Order concludes that the dialing parity requirements of Section 251(b)(3) should extend to all payphone location providers and that the interLATA carrier unblocking requirements established in TOCSIA should be extended to all local and long-distance calls.¹⁰³⁴ The Order requires that the technical and timing requirements established pursuant to Section 251(b)(3) and Section 271(c)(2)(B) should apply equally to payphones.¹⁰³⁵ Compliance with these requirements may require the use of engineering, technical, and operational skills.

359. Requiring the LECs to extend dialing parity to payphone location providers may burden some small LECs.

360. Steps Taken to Minimize Significant Economic Impact on Small Entities and Small Incumbent LECs, and Alternatives Considered. While this requirement may burden some small LECs, such burdens are far outweighed by the benefits gained from competition among local exchange and long distance carriers, many of whom are small business entities. We reject several alternatives in making this determination, including (1) a proposal suggesting that the states be given discretion to determine when and how dialing parity for intraLATA calls should be applied to payphones; (2) a proposal requiring LECs to provide dialing parity for payphones prior to all other phones; and (3) not altering the existing anti-blocking rules under TOCSIA. Rejection of these alternatives helps to ensure that small LECs will not be unnecessarily burdened. Furthermore, establishing a national rule should facilitate negotiations and reduce regulatory burdens and uncertainty for all parties, including small entities and small incumbent LECs.

¹⁰³⁴ See paras. 249, 251 above.

¹⁰³⁵ See para. 250 above.

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E. Commission's Outreach Efforts to Learn of and Respond to the Views of Small Entities Pursuant to 5 U.S.C. § 609

361. Our staff has conducted several ex parte meetings with numerous outside parties and their counsel, several of whom may qualify as small business entities, during the pendency of this rulemaking to identify and discuss various aspects of the implementation of Section 276. For example, we have received ex parte suggestions and comments from the American Public Communications Council, a trade association that represents independent payphone providers, many of whom qualify as small business entities. We have attempted, to the furthest possible extent, to take into account as many of these concerns as possible in promulgating the rules contained in this Order.

F. Report to Congress

362. The Commission shall send a copy of this FRFA, along with this Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

V. CONCLUSION

363. In this Report and Order, we have established procedures that will ensure that all payphone service providers are fairly compensated for every completed intrastate, interstate and international call, except for those calls excepted by statute, and we adopt interim compensation until the new compensation procedures are effective. We have also established procedures that ensure that all subsidies from basic exchange and exchange access revenues are removed simultaneous with the LECs' receipt of compensation for calls from LEC payphones. We require the BOCs to comply with certain nonstructural safeguards for their provision of payphone service, and allow them to negotiate with location providers for selecting and contracting with the carriers that provide interLata service from their phones. We set forth herein guidelines for public interest payphones, and establish guidelines for states to use in their proceedings for funding of such payphones.

VI. ORDERING CLAUSES

364. Accordingly, pursuant to authority contained in Sections 1, 4, 201-205, 215, 218, 219, 220, 226, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 215, 218, 219, 220, 226, and 276, IT IS ORDERED that the policies, rules, and requirements set forth herein ARE ADOPTED.

365. IT IS FURTHER ORDERED, that 47 C.F.R. Part 64, Subpart G and Subpart M ARE AMENDED as set forth in Appendix D, effective (30) days after publication of the text thereof in the Federal Register.

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366. IT IS FURTHER ORDERED, that 47 C.F.R. Part 64, Subpart M IS AMENDED as set forth in Appendix E, effective one year after publication of the text thereof in the Federal Register.

367. IT IS FURTHER ORDERED, that 47 C.F.R. Part 68, Subpart A IS AMENDED as set forth in Appendix E, effective April 15, 1997.

368. IT IS FURTHER ORDERED, that local exchange carriers SHALL RECLASSIFY their payphone assets and related expenses to nonregulated status on April 15, 1997.

369. IT IS FURTHER ORDERED, that carriers required to file a cost allocation manual pursuant to 47 C.F.R. Section 64.903 or by Commission order SHALL FILE revisions to their manuals implementing the reclassification required herein no later than February 14, 1997.

370. IT IS FURTHER ORDERED, that local exchange carriers SHALL FILE tariff revisions required by paras. 180 to 187 herein on January 15, 1997, to be effective April 15, 1997.

371. IT IS FURTHER ORDERED, the Bell Operating Companies ARE GRANTED waivers of the time requirements of the Computer II and the Computer III network disclosure requirements in order to provide basic network payphone services by April 15, 1997. Pursuant to this waiver, network disclosure notification for these basic network payphone services must be filed no later than January 15, 1997.

372. IT IS FURTHER ORDERED, that the Bell Operating Companies SHALL FILE CEI plans for the provision of payphone service not later than 90 days following publication of a summary of this Report and Order in the Federal Register.

373. IT IS FURTHER ORDERED, that the waivers of Section 64.1301 of the Commission's Rules granted to AT&T and Sprint in the proceedings referenced in para. 119 above ARE REVOKED, effective 30 days after publication of a summary of this Report and Order in the Federal Register.

374. IT IS FURTHER ORDERED, that the proceedings initiated by our Memorandum Opinion and Order on Further Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket 91-35, Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 10 FCC Rcd 11457 (1995), ARE TERMINATED.

375. IT IS FURTHER ORDERED, that the July 18, 1988 Petition of the Public Telephone Council for a declaratory ruling that BOC Payphones should be treated as CPE IS DISMISSED AS MOOT.

376. IT IS FURTHER ORDERED, that the August 7, 1995 Petition of Onco Communications, Inc. Requesting Compensation for Competitive Payphone Premises Owners and Presubscribed Operator Services Providers IS DENIED.

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377. IT IS FURTHER ORDERED, that the proceedings entitled Amendment of Section 69.2(m) and (ee) of the Commission's Rules to Include Independent Public Payphones Within the "Public Telephone" Exemption from End User Common Line Access Charges, RM 8723, ARE TERMINATED.

378. IT IS FURTHER ORDERED, that the December 28, 1989 Petition of the California Payphone Association IS DISMISSED AS MOOT.

379. IT IS FURTHER ORDERED, that the provisions set forth in Section 1.4 of the Commission's rules establishing the date of public notice for this Report and Order ARE WAIVED, and petitions for reconsideration SHALL BE FILED within 30 days of release of this document, and oppositions to the petitions must be filed within seven (7) days after the date for filing the petitions for reconsideration. For purposes of this proceeding, Section 1.106(h) of the Commission's Rules IS WAIVED, and the Commission will not accept replies to oppositions.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Federal Communications Commission

APPENDIX A

TEXT OF SECTION 276

PROVISION OF PAYPHONE SERVICE

(a) **NONDISCRIMINATION SAFEGUARDS.** -- After the effective date of the rules prescribed pursuant to subsection (b), any Bell operating company that provides payphone service--

(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and

(2) shall not prefer or discriminate in favor of its payphone service.

(b) **REGULATIONS.** --

(1) **CONTENTS OF REGULATIONS.** -- In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that --

(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;

(B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A);

(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding;

(D) provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry

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interLATA calls from their payphones, unless the Commission determines in the rulemaking pursuant to this section that it is not in the public interest; and

(E) provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones.

(2) PUBLIC INTEREST TELEPHONES.-- In the rulemaking conducted pursuant to paragraph (1), the Commission shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.

(3) EXISTING CONTRACTS.-- Nothing in this section shall affect any existing contracts between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of the date of enactment of the Telecommunications Act of 1996.

(c) STATE PREEMPTION.-- To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.

(d) DEFINITION.-- As used in this section, the term "payphone service" means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.

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APPENDIX B

PARTIES FILING COMMENTS

- 1 American Association of Airport Executives ("AAAE")
- 2 ACTEL, Inc. ("ACTEL")
- 3 Admiral's Club
- 4 AHA TelePLAN
- 5 Aid Association for Lutherans
- 6 Air Touch Paging ("Air Touch")
- 7 Airports Council International - North America ("ACI-NA")
- 8 American Hotel & Motel Association ("AHMA")
- 9 Ameritech
- 10 Anchorage Telephone Utility ("Anchorage Telephone")
- 11 American Public Communications Council ("APCC")
- 12 Arch Communications Group, Inc. ("Arch")
- 13 AT&T Corp. ("AT&T")
- 14 Bell Atlantic
- 15 Bell South Corporation ("Bell South")
- 16 Robert M. Brill, Esquire ("Brill")
- 17 Cable and Wireless, Inc. ("Cable & Wireless")
- 18 California Association of Long Distance Telephone Companies ("CALTEL")
- 19 California Payphone Association ("CPA")
- 20 People of the State of California and the Public Utilities Commission of the State of
California ("California PUC")
- 21 Call West Communications, Inc. ("Call West")
- 22 Cleveland Clinic Foundation ("Cleveland Clinic")
- 23 Communications Central, Inc. ("Communications Central")
- 24 Competitive Telecommunications Association ("CompTel")
- 25 ConQuest Long Distance Corp. ("ConQuest")
- 26 Dallas/Fort Worth International Airport ("DFW")
- 27 Excel Telecommunications, Inc. ("Excel")
- 28 Florida Public Service Commission ("Florida PSC")
- 29 Florida Public Telecommunications Association, Inc. ("FPTA")
- 30 Flying J Inc. ("Flying J")
- 31 Frontier Corporation ("Frontier")
- 32 Georgia Public Communications Association ("GPCA")
- 33 Greyhound Lines, Inc. ("Greyhound")
- 34 GTE Service Corporation ("GTE")
- 35 GVNW Inc./Management ("GVNW")
- 36 Idaho Public Utilities Commission ("Idaho PUC")
- 37 Illinois Public Telecommunications Association ("IPTA")
- 38 Independent Technologies, Inc. ("Independent Technologies")
- 39 Indiana Utility Regulatory Commission ("Indiana URC")